

Introduced by

1 A BILL for an Act to amend and reenact sections 12-47-36 and 12-59-04 of the North Dakota
2 Century Code, relating to open records and parole records of the department of corrections and
3 rehabilitation.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 12-47-36 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12-47-36. Records confidential - Exceptions.**

8 1. The medical, psychological, treatment, or social records of the department of
9 corrections and rehabilitation or its divisions or departments relating to persons in
10 the custody or under the supervision and management of the department of
11 corrections and rehabilitation are not public records subject to section 44-04-18
12 and section 5 of article XI of the Constitution of North Dakota, must be kept
13 confidential, and may not be disclosed directly or indirectly to any person,
14 organization, or agency, except as otherwise provided in this section. A court may
15 order the inspection of such records, or parts of such records, upon application to
16 the court and a showing that there is a proper and legitimate purpose for the
17 inspection of the records, with service of the application on the department of
18 corrections and rehabilitation and opportunity for the department of corrections and
19 rehabilitation to submit a written response.

20 2. Notwithstanding any other provisions of law relating to privilege or confidentiality,
21 records may be inspected by or disclosed to the following persons, organizations,
22 or agencies without prior application to the court: ~~the~~

23 a. The governor; ~~the~~

- 1 b. The pardon advisory board, if the governor has appointed a pardon advisory
- 2 board; ~~the~~
- 3 c. The parole board; ~~any~~
- 4 d. Any division, department, official, or employee of the department of
- 5 corrections and rehabilitation; ~~another~~
- 6 e. Another state receiving a parolee or probationer under the provisions of
- 7 chapter 12-56 or 12-56.1; ~~a~~
- 8 f. A federal, state, regional, or county correctional facility receiving physical
- 9 custody of a person under the legal custody of the department of corrections
- 10 and rehabilitation; ~~the~~
- 11 g. The employees in the office of the attorney general and investigators,
- 12 consultants, or experts retained by the state; ~~the~~
- 13 h. The risk management division of the office of management and budget for the
- 14 purpose of investigating and defending actions or claims under chapter
- 15 32-12.2; ~~the~~
- 16 i. A state's attorney and district court of the county where the judgment of
- 17 conviction was entered; ~~a~~
- 18 j. A state or federal court where a person in the custody or under the
- 19 supervision of the department of corrections and rehabilitation has
- 20 commenced litigation and the records are relevant to the litigation; or
- 21 ~~municipal;~~
- 22 k. Municipal county, state, or federal law enforcement agencies.
- 23 3. A criminal defendant's presentence investigation report, together with any
- 24 attachment or addendum, is subject to rule 32 of the North Dakota Rules of
- 25 Criminal Procedure and any amendments made thereto.
- 26 4. The parole board may permit the inspection of a person's preparole report, or parts
- 27 of the report, prepared for the parole board.
- 28 5. The employment status of a person in the custody of or under the supervision and
- 29 management of the department of corrections and rehabilitation may be disclosed
- 30 to an agency or official charged with the enforcement of child support.

1 6. Medical, psychological, or treatment records may be disclosed without prior
2 application to the court to a public hospital or treatment facility, the department of
3 human services, or to a licensed private medical or treatment facility, when
4 necessary for the evaluation, treatment, or care of a person in the custody or under
5 the supervision of the department of corrections and rehabilitation.

6 7. For purposes of this section, records with respect to the person's identity, location,
7 criminal convictions, or projected date of release are not medical, psychological,
8 treatment, or social records.

9 **SECTION 2. AMENDMENT.** Section 12-59-04 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **12-59-04. Records confidential - Inspection.** All parole records of the department of
12 corrections and rehabilitation records, including preparole reports, and the supervision history,
13 obtained in the discharge of official duty by any member of the parole board or employee of a
14 division or department of the department of corrections and rehabilitation, are confidential and
15 may not be disclosed except in the manner provided under section 12-47-36. An application for
16 parole and the decision of the parole board on the application are open records subject to
17 section 44-04-08 and section 5 of article XI of the Constitution of North Dakota.